

**Implementation of Disclosure in United States District Courts,
With Specific Attention to Courts' Responses to Selected
Amendments to Federal Rule of Civil Procedure 26**

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(Update of March 28, 1997 Report)**

Implementation of Disclosure in United States District Courts

This report is an update to the March 28, 1997 report on the federal district courts' responses to the 1993 amendments to Federal Rule of Civil Procedure 26. The heart of this report, as in last year's report (and the March 1994, 1995, and 1996 reports), is the attached table, which is based on the courts' local rules, general orders, and CJRA plans and which describes for each court which of five key provisions of Rule 26 are in effect.

The four sections below briefly describe the background to this report; summarize the amendments to Rule 26; note how the attached table may be read; and identify some patterns in the courts' responses to amended Rule 26.

Background to this Report

On December 1, 1993, amendments to the Federal Rules of Civil Procedure went into effect. Among these, amendments to Rule 26 provide for three types of self-executing disclosure: initial disclosure; expert disclosure; and pretrial disclosure. The amended rule also provides for deferral of formal discovery until parties have met to discuss and plan discovery and to make or arrange for the exchange of disclosures.

The proposed amendments to Rule 26 generated substantial controversy and an effort, ultimately unsuccessful, to persuade Congress to remove the proposed changes from the rule. The rule itself permits each court by local rule or order to exempt all cases or categories of cases from some of the rule's requirements and also permits parties to stipulate out of some of the requirements.

Since the effective date of the amendments, interest has been high in the courts' responses to amended Rule 26. How many have "opted out" of the rule's requirements, as the practice has come to be known? To answer this question, on March 1, 1994, the Federal Judicial Center distributed a report summarizing the courts' responses to Rule 26. In March of each year since then, the Center has canvassed the courts and prepared an update of its Rule 26 report. This fifth—and very likely last—report provides information current as of March 30, 1998.¹

Description of Selected Amendments to Federal Rule of Civil Procedure 26

This report describes the district courts' responses to selected subsections of Fed. R. Civ. P. 26, specifically 26(a)(1)-(3), 26(d), and 26(f). These subsections are summarized below.

Rule 26(a)(1), Initial Disclosure. Except as otherwise stipulated or as directed by order or local rule, a party must provide, without awaiting a discovery request, the following information at or within ten days of the Rule 26(f) meeting of counsel:

- name, address, and telephone number of all persons likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, with identification of the subjects of the information;
- a copy or description by category and location of all documents, data compilations, and tangible things in the party's possession, custody, or control that are relevant to disputed facts alleged with particularity in the pleadings;
- computation of damages claimed, with supporting documentation to be available for copying or inspection; and
- insurance policies that may satisfy the judgment, to be available for inspection or copying.

Rule 26(a)(2), Expert Disclosure. Parties must disclose the identity of persons who may testify as experts at trial [(a)(2)(A)] and, except as otherwise stipulated or as directed by the court, must provide a written report prepared and signed by the expert [(a)(2)(B)] containing:

- a complete statement of all opinions to be expressed by the expert and the basis and reasons for them;
- the data or other information considered by the expert in forming the opinions;
- exhibits to be used to summarize or support the opinions;
- qualifications of the expert;
- compensation to be paid the expert; and
- a list of cases in which the expert has testified, as an expert, at trial or by deposition in the last four years.

These disclosures must be made at the times and in the sequence directed by the court. In the absence of other directions by the court, disclosure of experts must be made at least 90 days before the case is to be ready for trial or within 30 days of another party's disclosure on the same subject matter when intended only to contradict or rebut that disclosure [(a)(2)(C)]. Note that Rule 26(a)(2) does not include a general opt-out provision and permits exemption from the expert's report only if stipulated by the parties or directed by the court.

Rule 26(a)(3), Pretrial Disclosure. In addition to the disclosures required above, a party must provide the following information about the evidence it may present at trial other than solely for impeachment purposes:

- name, address, and telephone number of each witness, separately identifying those the party expects to call and those it may call if necessary;
- list of witnesses whose testimony is expected to be presented by deposition and, if the deposition was not taken stenographically, a transcript of the pertinent portions; and
- an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those the party expects to offer and those it may offer if necessary.

Unless otherwise directed by the court, these disclosures must be made at least 30 days before trial. Within fourteen days of this disclosure, certain objections [specified in the rule] must be made and if not made, excepting objections under Fed. Rules of Evid. 402 and 403, are waived unless excused by the court for good cause shown. Note that Rule 26(a)(3) does not include an opt-out provision but provides only that the court may alter the timing for pretrial disclosures.

Rule 26(d), Timing and Sequencing of Discovery. The first sentence of Rule 26(d) states that, except when authorized under the federal rules or by local rule, order, or agreement of the parties, a party may not seek discovery from any source before the parties have met and conferred as required by Rule 26(f). The remainder of the rule is unchanged—formal discovery may proceed as under the old rule.

Rule 26(f), Meeting of Counsel and Written Discovery Plan. Except in actions exempted by local rule or when otherwise ordered, parties must meet at least fourteen days before a Rule 16(b) scheduling conference is held or a scheduling order is due to:

- discuss the nature and basis of their claims and defenses and the possibility of settlement;
- make or arrange to make the disclosures required by Rule 26(a)(1); and
- develop a written discovery plan, which must be submitted to the court within 10 days after the meeting. (The rule specifies the type of “views and proposals” that should be included in the discovery plan.)

Using the Attached Table to Understand the Courts’ Responses to Fed. R. Civ. P. 26 and the Courts’ Requirements Concerning Disclosure

The attached district-by-district table shows which subsections of Rule 26 are in effect in each district and which are not. The information in the table, which is current as of March 30, 1998, is derived primarily from orders, notices, and local rules adopted by the courts. Where a court has not formalized its response to the rule in writing, the clerks of court provided the necessary information. Each court has reviewed the attached table.²

For districts that decided not to implement one or more of the requirements of Rule 26(a), (d), and (f), I examined the CJRA plan³ and local rules to see whether either of these had requirements similar to the federal rule. A number of courts, for example, included disclosure provisions in CJRA plans adopted before the federal rules were amended. Some of these courts were reluctant, when the amended federal rules went into effect, to change requirements already established in their districts. Others who adopted CJRA plans late in 1993 anticipated promulgation of the federal rule amendments and addressed these expected changes in their plans. Thus, for courts opting out of one or more of the federal rule requirements covered by this table, I have indicated whether a similar requirement exists in local rules or CJRA plans. Without this information, it is easy to underestimate the number of courts with disclosure requirements.

Short summaries of technical information such as rules can do violence to the nuances of that information. This table is no exception. It provides only limited information, for example, about the types of cases or information subject to disclosure requirements. It also does not reveal the extent to which individual judges require disclosure. In using the table, please read the footnotes carefully, as they provide important definitions and cautions regarding the information in the table. In general, the table is best used as an overview of the courts' responses to amended Rule 26 and their disclosure requirements. Users who need to know specific requirements—for example, attorneys handling cases in federal court—should not rely on the table or cite it as legal authority.

Note that for about a dozen districts the source of information about the courts' implementation of Rule 26 has changed since the 1997 report. In response to a Judicial Conference directive to renumber local rules in accord with the federal rules, a number of courts have either incorporated general orders into local rules or have renumbered their discovery rules.⁴

A Summary Description of the Courts' Responses to Amended Fed. R. Civ. P. 26 and of the Courts' Disclosure Requirements

While the attached district-by-district table provides detailed information about the courts' responses to Fed. R. Civ. P. 26, Table 1 (next page) provides a numerical summary of those responses.⁵ Table 1 shows that Rule 26(a)(1), which requires initial disclosure, has been implemented by fewer districts than have the other sections of Rule 26. Altogether, just over half the districts have implemented 26(a)(1). This count is the same as last year, although in the intervening year one district has reversed its initial decision to opt in (and is now counted as “not in effect”) and another, whose CJRA plan had provided for disclosure, rescinded its plan and now follows the federal rule (and thus is now counted as “in effect”).⁶

Of the forty-five districts that have not implemented Rule 26(a)(1), three require initial disclosure through local rules, orders, or CJRA plan, one requires disclosure in a specified set of case types, and eighteen specifically give individual judges authority

to require initial disclosure. In only twenty-three courts, then, are all cases routinely exempt from any rules—federal or local—requiring initial disclosure. The table also shows that seven courts have implemented Rule 26(a)(1) with a significant revision. Typically the revision excludes either the requirement to disclose adverse material or the requirement to submit a computation of damages.

Table 1

Number of Courts in Which Specified Subsections of Federal Rule of Civil Procedure 26 Are or Are Not in Effect

Nature of Court's Response	Rule 26(a)(1)	Rule 26(a)(2)	Rule 26(a)(3)	Rule 26(d)	Rule 26(f)
In effect	49	80	78	57	65
In effect with a significant revision	7	4	1	1	2
Not in effect	45	12	16	36	29
But substantially provided for by CJRA plan or local rule	3	3	0	1	2
But the judge may order in the specific case	18	5	7	5	6
But is in effect for limited case types	1	0	0	1	1

Although Rule 26 does not include provisions for opting out of expert disclosure, 26(a)(2), and pretrial disclosure, 26(a)(3), Table 1 shows that about a fifth of the districts have interpreted the federal rule that way. Still, the great majority require expert and pretrial disclosure—80 and 78 courts, respectively, a number that is unchanged since March 1997. Of the courts adopting

expert disclosure, four have made a significant revision in their implementation of the rule; the most common revision is to exempt parties from submitting the experts' signed report.

Two-thirds of the districts have implemented Rule 26(f), which requires parties to meet and confer to prepare a discovery plan. Of the third that have not implemented this subsection, six permit individual judges to order it in the specific case. Fewer courts—but still substantially more than half—have implemented Rule 26(d), which requires parties to postpone discovery until they have held the 26(f) meeting. During the past year, two courts have reversed earlier decisions to implement Rule 26(f) and thus no longer require parties to meet and confer. One has reversed its decision to implement Rule 26(d)'s requirement that discovery be postponed until that meeting is held. Of the four decisions this past year to reverse previous implementation of various sections of Rule 26, three are due to a single court's actions; that is, one court decided to no longer require initial disclosure, the meet and confer, or postponement of discovery.

In general, Table 1 suggests that classifying courts as “opting in” and “opting out” of Rule 26's requirements over-simplifies their responses to the amended rule and may understate the extent to which parties will encounter disclosure requirements in federal courts. Rule 26(a)(1), for example, has been implemented in only half the districts, but those who practice in federal district court may encounter initial disclosure requirements in an additional twenty-two districts either upon order of the judge or through other local provisions for disclosure.⁷

Focusing again on Rule 26(a)(1), we see from Table 2 (below) that seven of the fourteen largest districts have implemented this subsection of the rule. One additional court requires initial disclosure by local rule or the CJRA plan. Another five have declined to adopt initial disclosure requirements but authorize individual judges to order it in specific cases, while one has declined altogether to implement any initial disclosure requirements.

Table 2

Implementation of Federal Rule of Civil Procedure 26(a)(1) in the Fourteen Largest District Courts*

Court has implemented Fed. R. Civ. P. 26(a)(1)	7
Local rule or CJRA plan requires initial disclosure	1
26(a)(1) is not in effect unless ordered by judge	5
26(a)(1) is not in effect	1

* Courts with twelve or more judgeships

In sum, compared to a year ago, the number of courts requiring initial disclosure has remained the same. Last year we reported that “in essence the courts’ responses to Rule 26 have been stable for the past two years.” To this count, we may now add a third year. If the past several years are predictive, and if courts wait to see what will come from the Advisory Committee’s actions regarding Rule 26, we may expect to see little change in the district courts’ Rule 26 requirements over the next year.

¹ This is likely to be the last report for two reasons. First, few courts have changed their response to the rule during the last two years. Second, the Judicial Conference Advisory Committee on Civil Rules is considering changes in Rule 26 aimed at restoring uniformity. Although a federal rule revision, if any, would not take effect for two years or more, it is unlikely that sufficient change in local rules will take place during the intervening time to make another update of this report necessary.

² If errors remain, however, they are mine alone.

³ The Civil Justice Reform Act of 1990 (28 U.S.C. §§ 471-482) required each federal district court to adopt a cost and delay reduction plan by December 1, 1993. All districts adopted a plan by that date. Although the Civil Justice Reform Act sunset on December 1, 1997, the section requiring the plans appears to remain in effect (*see* P.L. 105-53, October 6, 1997). Legislation pending in Congress would sunset that section (H.R. 1252, Judicial Reform Act of 1998).

⁴ *See* Report of the Proceedings of the Judicial Conference of the United States, March 12, 1996, Washington, DC, p. 34.

⁵ Note that in a few instances a court’s status is ambiguous; where this occurs, the court is not included in the tally for Table 1 and the numbers therefore do not add to ninety-four in every column. Note, too, that considerable judgment must be used in classifying some courts; others might assign specific courts to classifications different from mine.

⁶ Looking back over the five years since the federal rule was amended, we see that within a few months of the rule’s promulgation, roughly a third of the courts had implemented Rule 26(a)(1), a third had opted out, and a third had not made a final decision. A year later, when the March 1995 report was issued, implementation of Rule 26(a)(1) had increased to nearly half the courts requiring initial disclosure either through full implementation of the federal rule or through similar requirements in local rules or CJRA plans. Between 1995 and 1997, the increase was more incremental, with two courts adopting the rule each year. In 1998, a plateau appears to have been reached.

⁷ In separate research undertaken at the request of the Advisory Committee on Civil Rules, we found that initial disclosure was used in a substantial number of cases litigated in districts where the federal rule was not in effect. In a national random sample of cases terminated in federal district courts, more than a third of the attorneys who had litigated a case in districts classified as opting out of the rule reported that they had engaged in disclosure in the sample case. *See* Willging, et al., *Discovery and Disclosure Practice, Problems, and Proposals for Change* (Federal Judicial Center, 1997).

**Implementation Of Disclosure In United States District Courts,
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March 30, 1998 Update to March 28, 1997 Report

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
AL-M	Local Rules 26.1 and 26.2 1/98	In effect. ⁴	In effect.	In effect.		In effect.	In effect.	
AL-N	Local Rule 26.1 12/94	In effect, except as to documents. Obligation is to make available supporting documents.	In effect.	In effect.		In effect, except Rule 34 requests are allowable after appearance of defendant.	In effect.	
AL-S	Local Rule 26 6/97	In effect.	In effect.	In effect.		In effect.	In effect.	
AK	Local Rule 26.2 7/95	In effect.	In effect.	In effect.		In effect.	In effect.	
AZ	As reported by the court, 3/98	In effect.	In effect.	In effect.		In effect.	In effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
AR-E	General Order 42 2/22/94	Not in effect ⁵ unless ordered by the judge in the specific case or agreed to by the parties.	Not in effect unless ordered by the judge in the specific case or agreed to by the parties.	Not in effect unless ordered by the judge in the specific case or agreed to by the parties.		Not in effect.	Not in effect.	
AR-W	General Order 25 2/2/94	Not in effect unless ordered by the judge in the specific case.	Not in effect unless ordered by the judge in the specific case.	Not in effect unless ordered by the judge in the specific case.		Not in effect.	Not in effect.	
CA-C	Local Rules 6.1, 6.2, 9.4.4, 9.4.5, 9.4.6, 9.12 1/98	In effect, except document dis- closure is limited to those that tend to support the dis- closing party's position. ⁶	In effect.	Not in effect.		Not in effect.	In effect.	
CA-E	Local Rules 16-240(a), 26-252, and 37-251 4/15/97	Not in effect, but local rule permits the judge to order it in the specific case.	26(a)(2)(A)&(C) are in effect. 26(a)(2)(B) is not in effect.	Not in effect.		Not in effect.	Not in effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
CA-N	Civil Local Rules 16 and 26 9/1/95	In effect, except documents, not lists, must be produced and document disclosure is limited to those that tend to support the disclosing party's position.	In effect.	Local rule requires pretrial disclosure similar to federal rule.	There are separate disclosure requirements for patent cases, adopted 7/1/97 (LCR 16-6 to 16-11).	In effect.	In effect.	
CA-S	Local Rule 26.1 1/17/95	Not in effect, except by specific court order.	Not in effect, except by specific court order.	Not in effect, except by specific court order.	CJRA Plan requires initial disclosure similar to federal rule and some expert and pretrial disclosure.	Not in effect, except by specific court order.	Not in effect, except by specific court order.	
CO	Local Rule 26.1 4/15/94	In effect.	In effect.	In effect.		In effect.	In effect.	
CT	Local Rules 37 and 38 6/1/95	Not in effect.	In effect.	In effect.	CJRA Plan encourages voluntary exchange of information.	In effect.	In effect.	
DE	Local Rules 5.4 and 16.2 1/1/95	In effect.	In effect.	In effect.		In effect.	In effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
DC	Executive Order 12/10/93 Local Rules 206, 207, and 209 3/1/94	In effect, except for cases on the complex track.	In effect.	In effect.		In effect.	In effect.	
FL-M	Order 12/15/93 Local Rule 3.05 2/1/94	In effect for standard (track 2) cases, except that (a)(1)(A)&(B) are mandatory only if ordered by the court or stipulated by the parties. Judge may order disclosure in any specific case.	In effect for standard (track 2) cases and not in other cases unless ordered by the judge.	In effect for standard (track 2) cases and not in other cases unless ordered by the judge.		In effect for standard (track 2) cases and not in other cases unless ordered by the judge.	In effect for standard (track 2) cases and not in other cases unless ordered by the judge.	
FL-N	Local Rule 26.1 4/1/95 Court's standard Initial Scheduling Order ⁷	In effect.	In effect.	In effect, but not until discovery is complete and the order for a pretrial conference has been entered, which requires disclosure of all witnesses and examination of all exhibits.		In effect.	In effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
FL-S	Administrative Order 94-51 10/12/94 Local Rules 16.1 and 26.1 12/1/94	Not in effect, except as ordered by the judge in the specific case or stipulated by the parties and approved by the judge.	Not in effect, except as ordered by the judge in the specific case or stipulated by the parties and approved by the judge.	Not in effect, except as ordered by the judge in the specific case or stipulated by the parties and approved by the judge.	Local rule requires parties to disclose specified information about experts to be called at trial and their expected testimony.	Not in effect, except as ordered by the judge in the specific case or stipulated by the parties and approved by the judge.	In effect.	
GA-M	Local Rules 26 and 33.2 6/1/97	Not in effect.	Not in effect.	Not in effect.	Local rule requires mandatory interrogatories instead of initial disclosure and a uniform pretrial order instead of pretrial disclosure.	In effect.	In effect.	
GA-N	Local Rules 16.1 to 16.4, 26.1, 26.3 4/1/97	In effect.	In effect.	Court uses its more comprehensive uniform pretrial order.		Unless the parties agree to begin earlier, local rule defers formal discovery until 30 days after issue is joined.	In effect.	
GA-S	Local Rules 26.1 and 26.3 9/1/94	Not in effect.	In effect.	In effect.	Local rule requires mandatory interrogatories that encompass some of the requirements of 26(a)(1).	Appears to be mooted by non-implementation of 26(f).	Not in effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
GU	As reported by the court, 3/98	In effect.	In effect.	In effect.		In effect.	In effect.	
HI	Local Rule 230-1 2/15/95	Not in effect, but local rule permits the judge to order certain disclosures in the specific case.	In effect.	In effect.		In effect.	In effect.	
ID	Local Rule 26.2 8/1/97	Not in effect.	In effect.	In effect.		Not in effect.	Not in effect.	
IL-C ⁸	Local Rule 26.2 6/97	In effect.	In effect.	In effect.		In effect.	In effect.	
IL-N	General Order 3/9/95 Local Rule 5.00 3/20/95	26(a)(1) is not in effect except as ordered by the judge in the specific case.	In effect.	In effect.	In cases exempt from 26(a)(1) disclosures, insurance agree- ments may be sought under F.R.Civ.P. 34.	In effect.	Local rule requires a conference but no written plan unless ordered by the judge.	In cases exempt from holding the 26(f) meeting, parties may seek discovery after the first scheduling conference.
IL-S	Local Rules 11 and 12 3/24/94 ⁹	In effect, except for 26(a)(1)(C).	In effect.	In effect.		In effect.	In effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
IN-N	As reported by the court, 3/98	In effect.	In effect.	In effect.	The CJRA Plan describes the different forms of disclosure required by each judge.	In effect.	In effect.	The CJRA Plan describes the different forms of disclosure required by each judge.
IN-S	Local Rules 16.1 and 26.3 2/10/95	Not in effect.	In effect. Local rules instruct parties to consider in their case management plan whether 26(a)(2)(B) should be varied by parties' stipulation.	In effect.		Not in effect.	Not in effect.	
IA-N	Local Rule 16 7/1/94	Not in effect.	26(a)(2)(A) is in effect but is controlled by the Rule 16(b) scheduling order and the Rule 26(f) discovery plan. 26(a)(2)(B)& (C) are not in effect.	In effect except for 26(a)(3)(i) and (ii).		Not in effect.	In effect, except for references to 26(a)(1) disclosures.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
IA-S	Local Rule 16.1 5/5/97	Not in effect.	26(a)(2)(A) is in effect but is controlled by the Rule 16(b) scheduling order and the Rule 26(f) discovery plan. 26(a)(2)(B) & (C) are not in effect.	In effect except for 26(a)(3)(i) and (ii).		Not in effect.	In effect, except for references to 26(a)(1) disclosures.	
KS	Local Rule 26 6/95	In effect.	In effect.	In effect.		In effect.	In effect.	
KY-E	General Order 1/9/95	In effect.	In effect.	In effect.		In effect.	In effect.	
KY-W	General Order 2/1/94	In effect.	In effect.	In effect.		In effect.	In effect.	
LA-E	Local Rule 26.1 to 26.8 4/15/97	Not in effect unless ordered by the judge in the specific case.	In effect. The scope and timing of disclosures are directed by the court pursuant to the CJRA Plan.	In effect. The scope and timing of disclosures are directed by the court pursuant to the CJRA Plan.		In effect.	In effect, except that parties may agree in writing not to hold the meeting or to hold it by telephone.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
LA-M	Local Rule 26.1 to 26.8 4/15/97	Not in effect unless ordered by the judge in the specific case.	In effect. The scope and timing of disclosures are directed by the court pursuant to the CJRA Plan.	In effect. The scope and timing of disclosures are directed by the court pursuant to the CJRA Plan.		In effect.	In effect.	
LA-W	Local Rule 26.1 to 26.8 4/15/97	Not in effect unless ordered by the judge in the specific case or stipulated by the parties.	In effect.	In effect.		In effect.	In effect.	
ME	Local Rule 26(d) 3/1/97	Not in effect.	Not in effect.	Not in effect.	Disclosures are made as required by the local rules and by the scheduling order in each case.	Appears to be mooted by non- implementation of 26(f).	Not in effect.	
MD	Local Rules 104.4, 104.10, and 106.2 7/1/94	Not in effect, except for a limited number of case types.	In effect.	In effect as part of pretrial order submission.		The first sentence of Rule 26(d) is not in effect, except in cases designated by the judge as complex.	Not in effect, except in cases designated by the judge as complex.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
MA	Local Rules 16.1 to 16.5 and 26.1 to 26.6 1/2/95	In effect unless ordered otherwise by the judge.	In effect.	In effect.		Not in effect. By local rule, parties may not seek discovery until the 26(a)(1) disclosures have been made unless otherwise ordered by the judge.	In effect.	
MI-E	Local Rule 26.3 12/5/94	Not in effect unless ordered otherwise by the judge in the particular case.	In effect.	In effect.		In effect.	In effect.	
MI-W	Administrative Order 93-125 12/17/93	Not in effect, except as required by the judge in the specific case.	In effect, as directed by the case management order in the specific case.	In effect, as directed by the case management order in the specific case.		Not in effect.	In effect, but the meeting takes place as directed by the court's order setting the Rule 16 conference.	
MN	As reported by the court, 3/98	In effect, subject to application by the judge in the specific case.	In effect, subject to application by the judge in the specific case.	In effect, subject to application by the judge in the specific case.		In effect, subject to application by the judge in the specific case.	In effect, subject to application by the judge in the specific case.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
MS-N	Uniform CJRA Plan Effective 1/1/94, Amended 7/1/96	In effect.	In effect.	In effect.		In effect.	In effect.	
MS-S	Uniform CJRA Plan Effective 1/1/94, Amended 7/1/96	In effect.	In effect.	In effect.		In effect.	In effect.	
MO-E	Local Rule 3.01 1/1/96	In effect.	In effect.	In effect.		In effect, except local rule permits service of interrogatories and requests for production or inspection after entry of appearance.	In effect.	
MO-W	Local Rules 16.1, 26.1, 26.2, 37.1 4/10/97	In effect.	In effect.	In effect.		In effect.	In effect.	
MT	Standing Order 5 1/25/94 Rule 200-5 3/31/92	In effect.	In effect.	In effect.		In effect.	In effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
NE	Order 12/30/93	In effect.	In effect.	In effect.		In effect.	In effect.	
NV	Local Rule 26-1 6/1/95	Portions in effect (26(a)(1)(A), (B), and (D)). ¹⁰ Documents, not lists, must be produced and document dis- closure is limited to those that tend to support the dis- closing party's position.	In effect.	In effect.		Not in effect.	In effect.	
NH	Local Rule 26.1 1/1/96	Not in effect, unless the court orders otherwise.	In effect.	In effect.		In effect.	In effect.	
NJ	Local Civil Rule 26.1 4/1/97	In effect.	In effect.	In effect.		In effect.	In effect.	
NM	Local Rule 26.3 1/1/96	In effect.	In effect, except a treating physician need not prepare a report.	In effect.		In effect.	In effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
NY-E	As reported by the court, 3/98	In effect.	In effect.	In effect.		In effect.	In effect.	
NY-N	General Order 40 12/14/93 Uniform Pretrial Scheduling Order Amended 10/95	Not in effect.	In effect.	Not in effect.	CJRA Plan requires voluntary exchange of information.	In effect.	In effect.	
NY-S	Local Rule 26.4 4/15/97	Not in effect.	In effect.	In effect.		Not in effect.	Not in effect.	
NY-W	Local Rule 26 12/1/94	Not in effect unless ordered by the judge in the specific case.	In effect unless ordered otherwise by the judge in the specific case.	In effect unless ordered otherwise by the judge in the specific case.		Discovery may not commence until issue is joined unless otherwise stipulated by the parties or ordered by the judge in the specific case.	Not in effect unless ordered otherwise by the judge in the specific case.	
NC-E	Local Rule 23.07 10/15/97	Not in effect.	In effect.	In effect.		Not in effect.	In effect.	
NC-M	Local Rules 26.1 and 26.2 7/1/97	Not in effect.	In effect.	In effect.		In effect.	In effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
NC-W	As reported by the court, 3/98	In effect.	In effect.	In effect.		In effect.	In effect.	
ND	Local Rule 26 1/23/95	In effect.	In effect.	In effect.		In effect.	In effect.	
NMI	Local Rule 26 1/1/97	In effect.	In effect.	In effect.		In effect.	In effect.	
OH-N	As reported by the court, 3/98	In effect.	In effect.	In effect.		In effect.	In effect.	
OH-S	General Order 93-3, 12/1/93 Local Rules 26.3, 26.4, and 26.5 12/1/93	Not in effect unless ordered by the judge or agreed to by the parties in the specific case.	In effect.	In effect.		Not in effect.	Not in effect unless ordered by the judge in the specific case.	
OK-E	Local Rules 26.1, 26.2, and 26.3 10/1/96	26(a)(1)(D) is in effect. 26(a)(1)(A)-(C) are not in effect.	Not in effect.	In effect.	CJRA Plan requires disclosure of factual and legal basis for the claim.	Not in effect.	In effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
OK-N	Local Rules 26.1, 26.2, and 26.3 12/1/93	26(a)(1)(D) is in effect. 26(a)(1)(A)-(C) are not in effect. Disclosure may be required by the judge on a case-by-case basis.	In effect.	In effect.	CJRA Plan encourages voluntary disclosure.	Not in effect.	Not in effect.	
OK-W	Local Rules 16.1, 26.1, and 26.2 3/1/96	Not in effect.	In effect.	In effect.	Local rule, in lieu of 26(a)(1), requires disclosure of documents and insurance agreements; experts and their expected testimony; and witnesses whose testimony bears significantly on claims and defenses.	Not in effect.	Not in effect.	Counsel are required by local rule to submit a report prior to the case management conference. Topics for the report are stated in the local rules.
OR	Order 94-7 3/15/94 Local Rules 16.2, 26.2, 26.3, 26.4 6/1/98 ¹¹	Not in effect unless otherwise ordered by the judge in the specific case.	In effect.	In effect.		Not in effect unless otherwise ordered by the judge in the specific case.	Not in effect unless otherwise ordered by the judge in the specific case.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
PA-E	Standing Order 12/1/93 Local Civil Rules 26.1(a)-(e) 7/1/95	Not in effect.	In effect.	In effect.	CJRA Plan requires initial disclosure similar to federal rule, excepting 26(a)(C).	Not in effect.	Not in effect.	CJRA Plan requires deferment of discovery until initial disclosure is made, except by leave of court or agreement of the parties. CJRA Plan requires parties in cases on the Special Management Track to confer and provide the court a joint discovery- management plan.
PA-M	As reported by the court, 3/98	In effect.	In effect.	In effect.		In effect.	In effect.	
PA-W	Order of Court 12/10/93	Not in effect.	In effect.	In effect. ¹²		Not in effect.	Not in effect.	
PR	Notice 94-21 7/8/94 Local Rule 311.16 6/16/94	Not in effect.	Not in effect.	Not in effect.		Appears to be mooted by non- implementation of 26(f).	Not in effect.	
RI	General Order 5/9/94	Not in effect.	Not in effect.	Not in effect.		Not in effect.	Not in effect only insofar as it relates to 26(a)(1).	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
SC	Local Rules 1.03, 16.01, and 26.01 <i>et seq.</i>	Replaced by Local Civil Rules 26.01-26.08.	Replaced by Local Civil Rule 26.09.	In effect, as modified by Local Civil Rule 26.11.	Local Civil Rules 26.01 <i>et seq.</i> , which are similar to F.R.Civ.P. 26(a)(1)-(2), require parties to complete standard interrogatories.	Not in effect.	Not in effect.	
SD	Standing Order 12/30/93	In effect.	In effect.	In effect.		In effect.	In effect.	
TN-E	Local Rule 26.1 3/1/94	In effect.	In effect.	In effect.		In effect.	In effect.	
TN-M	Administrative Order 132-6 12/1/93 Local Rule 9, 3/1/94	Not in effect.	In effect.	In effect.	CJRA Plan permits the judge to order initial disclosure in the specific case.	The individual judge may order in the specific case.	The individual judge may order in the specific case.	
TN-W	Administrative Order 97-15 8/1/97	In effect.	In effect.	In effect.		In effect.	In effect.	
TX-E	Local Rule CV 26 3/11/98	In effect.	In effect.	In effect.		In effect.	In effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
TX-N	Special Order 2-12 12/20/93 Local Rule 26.1 4/15/97	Not in effect unless the presiding judge directs or the parties stipulate.	Application of the rule is at the discretion of each judge.	Application of the rule is at the discretion of each judge.	CJRA Plan encourages voluntary exchange of information.	Application of the rule is at the discretion of each judge.	Application of the rule is at the discretion of each judge.	
TX-S	Order for Conference and Instructions Under Rule 26(f) Federal Rules of Civil Procedure	In effect.	In effect.	In effect.		In effect.	In effect.	
TX-W	Local Rule CV 16(e) 1/14/94	Not in effect.	Not in effect.	Not in effect.	Local rule requires early disclosure of all potential witnesses, a written summary of experts' proposed testimony, and a list of proposed trial exhibits.	Not in effect.	Not in effect.	
UT	Order of the Court 1/9/96 Local Rule 16-1 9/97	In effect.	In effect.	In effect.		In effect.	In effect.	
VT	Local Rule 26.1 4/15/97	Not in effect.	In effect.	In effect.		In effect.	In effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
VI	Local Rules 16.1(c), 26.2(c), 26.3(a), 26.3(b), and 26.3(c) 2/8/96	In effect, except 26(a)(1)(C).	In effect.	In effect.		Not in effect.	Not in effect.	
VA-E	Local Rule 26 1/1/97	Not in effect.	In effect.	In effect.		Not in effect.	Not in effect.	
VA-W	General Order 6/13/96	Not in effect.	In effect.	In effect.		Not in effect.	Not in effect.	
WA-E	General Order 81-A 10/12/94 Local Rule 26.1 and 26.2 9/1/96	In effect.	In effect.	In effect.		In effect.	In effect.	
WA-W	Order 94-27 9/30/94 Local Civil Rule CR16 9/30/94	Not in effect.	26(a)(2)(A) & (C) are in effect. 26(a)(2)(B) is not in effect, but the individual judge may order it in the specific case.	In effect.	Local rule requires counsel to prepare a statement of experts' opinions, the information relied on, and their qualifications and compensation.	Not in effect.	Not in effect.	

1 District	2 Rule/Order²	3 Initial Disclosure Rule 26(a)(1)	4 Expert Disclosure Rule 26(a)(2)	5 Pretrial Disclosure Rule 26(a)(3)	6 Other Disclosure Requirements³	7 Discovery Deferment Rule 26(d)	8 Confer & Prepare Discovery Plan Rule 26(f)	9 Other Requirements³
WV-N	Articles 2 and 3 of Local Rules of Civil Procedure 3/1/96	In effect.	In effect.	In effect.		Not specifically addressed in local rules.	In effect.	
WV-S	Local Rules 16.1, 26.1, and 26.2 4/11/97	In effect.	In effect.	In effect.		In effect.	In effect.	
WI-E	Order 1/7/94	Not in effect.	Not in effect.	Not in effect.	Local rules require expert disclosure and mandatory interro- gatories. CJRA Plan requires disclosure of the substance of experts' testimony.	Not in effect.	Not in effect.	
WI-W	General Order 12/6/93	In effect.	In effect.	In effect.		In effect.	In effect.	
WY	Local Rules 16 and 26 1/9/98	In effect.	In effect, except deposition testi- mony may be submitted in lieu of written report.	In effect.		Not in effect.	Not in effect.	

Table Footnotes

- 1 The information in the table, which is current through March 30, 1998, is derived from orders and notices issued by the courts in anticipation of or subsequent to the December 1, 1993, federal rule amendments; from local rules; from Civil Justice Reform Act (CJRA) plans; and from clerks of court or other court staff. See the introduction to these tables for a fuller discussion of the sources. The table should not be cited as legal authority or substituted for a careful examination of federal rules or local rules, orders, and CJRA plans. Note that although the Civil Justice Reform Act sunset on December 1, 1997, the section requiring the plans appears to remain in effect (*see* P.L. 105-53, October 6, 1997). Legislation pending in Congress would sunset that section (H.R. 1252, Judicial Reform Act of 1998).

I very much appreciate, as always, the assistance of Melissa Pecherski in preparing this update. And I'm most grateful to the clerks and staff of the district courts, who for five years have faithfully and patiently answered my requests for information and review of this report.
- 2 The greatest change to the table since the 1997 version (and the 1996 version) is in this column. In response to a Judicial Conference directive to renumber local rules in accord with the federal rules, a number of courts have renumbered their discovery rules or have incorporated into their local rules earlier general orders on disclosure. (*See* Report of the Proceedings of the Judicial Conference of the United States, March 12, 1996, Washington, DC, p. 34.)
- 3 Columns 6 and 9 identify local rule or CJRA plan requirements that may apply in courts that have elected to exempt cases from some or all of the disclosure provisions of Rule 26(a), (d), or (f). Some of these courts have requirements similar to the federal rule, while others require much more limited disclosure or require none but permit judges to order it in the specific case. Where the entry says "similar to the federal rule," the local rule may be similar to an early version of the federal rule ("bears significantly on") or to the final version ("alleged with particularity"). Though similar, the local rule may differ in its particulars—e.g., the timing of disclosure—but in general "similar" signifies that the court embraces the idea of self-executing disclosure and requires it in some form.
- 4 "In effect" means that cases filed in these courts are subject to the requirements of the federal rule. Where the federal rule is in effect, the court may nonetheless use local rules or orders to alter the effect of the federal rule—e.g., by exempting such case types as habeas corpus, Social Security, and bankruptcy; setting different time frames for disclosure; or permitting individual judges to opt out. Local rules or orders may also establish an effective date later than December 1, 1993, and may specify whether the federal rules apply only to newly filed cases or also to pending cases. Two significant alterations—not requiring documents adverse to one's case and not requiring damage computations—are noted in the table. Some courts' orders in response to the federal rule are explicit only in stating which provisions are *rejected*. When the order does not specifically reject a provision, we assume it is in effect.
- 5 "Not in effect" means that cases filed in these courts are exempt from the requirements of the federal rule subdivision identified at the head of the columns. In many courts, however, individual judges may require parties to follow the federal rule requirements, or local rules or CJRA plans may provide for some type of disclosure (see columns 6 and 9).
- 6 The standard used for disclosing witnesses and documents is those that support or rebut, respectively, "material allegations of the pleading" made by oneself or one's opponent, rather than the federal rule's "relevant to disputed facts alleged with particularity in the pleadings."
- 7 To avoid lengthy delays at case outset, the court enters the initial scheduling order when the defendant files answer or other Rule 12 response. A final scheduling order is entered later to accommodate Rule 16(b)'s specification that it must be entered after the Rule 26(f) report or other consultation.
- 8 Parties may not agree to opt out of the requirements of F.R.Civ.P. 26.

- 9 The court expects to renumber its local rules to conform to the numbering of the Federal Rules of Civil Procedure but expects to make no change in the content of the rules governing disclosure.
- 10 The standard used for witnesses is those likely to have knowledge of “material facts,” rather than the federal rule’s “relevant to disputed facts alleged with particularity.”
- 11 The court renumbered its local rules but did not change the content of the disclosure rules. The renumbered rules will take effect June 1, 1998.
- 12 Local Rule 16.1 states that failure to disclose the substance of evidence proposed to be offered at trial will result in the exclusion of that evidence at trial unless the parties agree otherwise or the judge orders otherwise (except evidence used for impeachment).